

114TH CONGRESS  
1ST SESSION

# H. R. 1883

To improve the process by which the Librarian of Congress considers requests for exemptions to section 1201(a)(1)(A) of title 17, United States Code, and to ease restrictions on the use of certain statutory exemptions to the Digital Millennium Copyright Act.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 16, 2015

Mr. POLIS introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To improve the process by which the Librarian of Congress considers requests for exemptions to section 1201(a)(1)(A) of title 17, United States Code, and to ease restrictions on the use of certain statutory exemptions to the Digital Millennium Copyright Act.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Breaking Down Bar-  
5 riers to Innovation Act of 2015”.

6 **SEC. 2. SENSE OF CONGRESS.**

7       It is the sense of Congress that—

19 (4) the Librarian—

(A) should not impose undue burdens on proponents of exemptions; and

22 (B) should ensure that the rulemaking  
23 process for considering exemptions is responsive  
24 to changes in the technological landscape.

1   **SEC. 3. CIRCUMVENTION OF COPYRIGHT PROTECTION SYS-**

2                   **TEMS.**

3               (a) VIOLATIONS REGARDING CIRCUMVENTION OF

4 TECHNOLOGICAL MEASURES.—

5               (1) IN GENERAL.—Section 1201(a)(1) of title

6   17, United States Code, is amended—

7                   (A) in subparagraph (A), by striking the  
8                   second sentence;

9                   (B) in subparagraph (C)—

10                  (i) in the matter preceding clause  
11                  (i)—

12                  (I) by striking “During the 2-  
13                  year period described in subparagraph  
14                  (A), and during each succeeding 3-  
15                  year period,” and inserting “Every 3  
16                  years,”; and

17                  (II) by striking “the Librarian  
18                  shall examine” and inserting “the Li-  
19                  brarian shall consider, if applicable”;

20                  (ii) in clause (i), by striking “the  
21                  availability for use of copyrighted works”  
22                  and inserting “any reduction in the avail-  
23                  ability for use of copyrighted works as a  
24                  result of the prohibition on the circumven-  
25                  tion of technological measures”;

(iii) in clause (iii), by striking “or research” and inserting the following: “repair, recycling, research, or other fair uses, and on access to information not subject to copyright protection”;

(iv) by redesignating clauses (iv) and (v) as clauses (vi) and (vii), respectively; and

(v) by inserting after clause (iii) the following:

“(iv) the impact that the prohibition on the circumvention of technological measures has on the accessibility of works and technologies for persons with disabilities;

“(v) the impact that the prohibition on the circumvention of technological measures has on the furtherance of security research;”;

(C) by redesignating subparagraph (D) as subparagraph (F);

(D) by striking subparagraph (E);

(E) by inserting after subparagraph (C) following:

1       “(D) In making a determination under subparagraph  
2 (C), the Librarian—

3           “(i) shall consider the totality of the evidence  
4 available to the Librarian; and  
5           “(ii) may not assign the burden of proof to a  
6 proponent of an exemption.

7       “(E) The Librarian, at the discretion of the Librar-  
8 ian, may conduct a rulemaking proceeding under subpara-  
9 graph (C) outside of the 3-year review process described  
10 in that subparagraph if the Librarian determines that it  
11 is substantially likely that persons who are users of a copy-  
12 righted work which is in a particular class of works are,  
13 or are likely to be in the succeeding 3-year period, ad-  
14 versely affected by virtue of the prohibition under subpara-  
15 graph (A) in their ability to make noninfringing uses of  
16 that particular class of works under this title.”;

17           (F) in subparagraph (F), as redesign-  
18 nated—

19           (i) by striking “The Librarian” and  
20 inserting “(i) The Librarian”;  
21           (ii) by striking “adversely affected,”  
22 and the prohibition” and inserting the fol-  
23 lowing: “adversely affected.  
24       “(ii) The prohibition”; and

(iii) by adding at the end the following:

3        “(iii) At the end of each 3-year period described in  
4 subparagraph (C), the Librarian shall renew for the ensu-  
5 ing 3-year period each exemption granted under subpara-  
6 graph (C) unless the Librarian determines that, as a re-  
7 sult of changed circumstances, it is unlikely that any per-  
8 sons who are users of a copyrighted work in the class of  
9 copyrighted works to which the exemption relates will be  
10 adversely affected by virtue of the prohibition under sub-  
11 paragraph (A) in their ability to make noninfringing uses  
12 of that particular class of works under this title.”; and

13 (G) by inserting after subparagraph (F),  
14 as redesignated, the following:

15        "(G) For purposes of this paragraph—

16               “(i) persons are ‘adversely affected’ if a techno-  
17               logical measure that effectively controls access to a  
18               work which is in a particular class of copyrighted  
19               works diminishes the ability of the persons to make  
20               noninfringing uses of that particular class of works  
21               under this title;

22               “(ii) if a technological measure inhibits non-  
23               infringing uses of a work which is in a particular  
24               class of copyrighted works relating to improving ac-  
25               cessibility of works or technologies for persons with

1       disabilities, there shall be a presumption that per-  
2       sons who use that particular class of work are likely  
3       to be adversely affected; and

4           “(iii) the Librarian may find that a use of a  
5       work is noninfringing based upon the totality of the  
6       circumstances, including—

7              “(I) the presence of supporting judicial  
8       precedent;

9              “(II) the absence of contrary judicial  
10       precedent;

11              “(III) the intent of Congress; and

12              “(IV) any other factors relevant to—

13                  “(aa) assessing the applicability of  
14       copyright protection; or

15                  “(bb) exceptions to or limitations on  
16       copyright protection.”.

17           (2) REPORT.—Not later than 1 year after the  
18       date of enactment of this Act, the Librarian of Con-  
19       gress, in consultation with the Register of Copy-  
20       rights and the Assistant Secretary for Communica-  
21       tions and Information of the Department of Com-  
22       merce, shall—

23              (A) conduct a study, including by soliciting  
24       public comment, on—

(i) ways to ease the burden on persons requesting an exemption under section 1201(a)(1)(C) of title 17, United States Code, as amended by paragraph (1);

(ii) how the process for requesting and granting exemptions described in clause (i) can be used to foster security research; and

(iii) how the process for requesting and granting exemptions described in clause (i) can be expanded to enable the sale and dissemination of circumvention tools, as described in subsections (a)(2) and (b)(1) of section 1201 of title 17, United States Code, for the sole purposes of enabling circumventions with respect to the classes of copyrighted works that the Librarian has published under subparagraph (F) of subsection (a)(1) of such section, as redesignated by paragraph (1); and

(B) shall submit to Congress a report on the study conducted under subparagraph (A) that includes—

4 (ii) a description of any obstacles to  
5 the expansion described in clause (iii) of  
6 subparagraph (A) and proposed legislation  
7 for achieving such an expansion.

(b) REVERSE ENGINEERING.—Section 1201(f) of title 17, United States Code, is amended—

1       (c) ENCRYPTION RESEARCH.—Section 1201(g) of  
2 title 17, United States Code, is amended—

3           (1) in paragraph (1)(A)—

4              (A) by striking “activities necessary to  
5 identify and analyze flaws” and inserting “ac-  
6 tivities relating to the identification and anal-  
7 ysis of flaws”; and

8              (B) by striking “to advance the state of  
9 knowledge in the field of encryption technology”  
10 and inserting “for research purposes”;

11           (2) in paragraph (2)—

12              (A) in subparagraph (B), by striking “nec-  
13 essary to conduct” and inserting “undertaken  
14 in the course of conducting”; and

15              (B) in subparagraph (D), by striking all  
16 that follows “infringement under this title” and  
17 inserting a period;

18           (3) by striking paragraphs (3) and (5);

19           (4) by redesignating paragraph (4) as para-  
20 graph (3); and

21           (5) in paragraph (3)(B), as redesignated, by  
22 striking “with whom he or she is working collabor-  
23 atively”.

1       (d) PROTECTION OF PERSONALLY IDENTIFYING IN-  
2 FORMATION.—Section 1201(i)(1)(D) of title 17, United  
3 States Code, is amended—

4                 (1) by striking “solely”; and  
5                 (2) by striking “who seeks to gain access to the  
6 work protected, and is not in violation of any other  
7 law”.

8       (e) SECURITY TESTING.—Section 1201(j) of title 17,  
9 United States Code, is amended—

10               (1) in paragraph (2), by striking all that follows  
11 “infringement under this title” and inserting a pe-  
12 riod;

13               (2) by striking paragraph (3);  
14               (3) by redesignating paragraph (4) as para-  
15 graph (3); and

16               (4) in paragraph (3), as redesignated, by strik-  
17 ing “subsection (2)” and all that follows and insert-  
18 ing “paragraph (2)”.

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